



FILED

Feb 26 2009, 9:30 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

BAILEY, Judge

Case Summary

Dewayne Lodholtz (“Lodholtz”) appeals his sentences for five convictions in three causes. We affirm.

Issue

Lodholtz raises the sole issue of whether his sentences are inappropriate.

Facts and Procedural History

Sometime before July 2002, Lodholtz lost his driving privileges. Pursuant to a plea agreement, he pled guilty to Theft and Operating a Vehicle after Lifetime Suspension of Driving Privileges (“Operating after Lifetime Suspension”). (Cause No. 71D02-0207-FC-196 (“Cause 2002”)). On November 20, 2002, the trial court sentenced him to concurrent terms of three years for Theft and eight years for Operating after Lifetime Suspension, with four years suspended to probation.

On November 4, 2006, Lodholtz was driving north of the Notre Dame campus. Drinking alcohol had affected his judgment. He proceeded despite being pursued by four or five police cars with their lights and sirens activated, ultimately stopping when his car became disabled along the road. The State charged Lodholtz with Operating a Vehicle While Intoxicated (“OWI”), Resisting Law Enforcement (“RLE”), and Operating after Lifetime Suspension. (Cause No. 71D02-0611-FC-350 (“Cause 2006”)). When the defendant failed to appear for a hearing, a bench warrant was issued.

During the pendency of Cause 2006, Lodholtz was arrested after driving near downtown South Bend. The State charged Lodholtz with Possession of Marijuana and

Operating after Lifetime Suspension. (Cause No. 71D01-0707-FC-211 (“Cause 2007”)).

On February 4, 2008, Lodholtz and the State submitted a written plea agreement to the trial court. Lodholtz admitted to: (1) violating his probation in Cause 2002; (2) OWI, as a Class A misdemeanor,¹ RLE, as a Class D felony,² and Operating after Lifetime Suspension, a Class C felony,³ in Cause 2006; and (3) Operating after Lifetime Suspension, a Class C felony, in Cause 2007.

In considering Lodholtz’s significant history of auto and alcohol related convictions, the trial court remarked, “I do believe that at some point and time all of this is going to end, by you either killing yourself in a car or killing somebody else.” Appendix at 16. The trial court accepted the plea agreement and issued orders in all three causes. In Cause 2002, it ordered Lodholtz to execute the four years that had been previously suspended to probation. In Cause 2007, it entered judgment and imposed the advisory sentence of four years, to be fully executed. Finally, in Cause 2006, the trial court entered judgments and ordered concurrent sentences of one year for OWI, one year for RLE, and seven years for Operating after Lifetime Suspension, to be fully executed. The sentences for each cause were ordered to be served consecutively, for an aggregate term of fifteen years, to be fully executed.

Lodholtz now appeals.

¹ Ind. Code § 9-30-5-2(b).

² Ind. Code § 35-44-3-3(b)(1)(A).

³ Ind. Code § 9-30-10-17.

Discussion and Decision

As probation is a matter of grace, the trial court has “considerable leeway in deciding how to proceed” where a probation violation has been established. Prewitt v. State, 878 N.E.2d 184, 188 (Ind. 2007). We therefore review sentencing decisions on probation violations for an abuse of discretion, not pursuant to Indiana Appellate Rule 7(B). Id. at 187-88. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Id. at 188. Lodholtz argued only pursuant to Appellate Rule 7(B). Regardless, we conclude that the trial court did not abuse its discretion in revoking Lodholtz’s probation.

We also note that Causes 2006 and 2007 were filed before Lodholtz was discharged from Cause 2002. Similarly, Cause 2007 was filed before the defendant was discharged from Cause 2006. Accordingly, the trial court was obligated to order the sentences in the three causes to be served consecutively to the other causes. See Ind. Code § 35-50-1-2(d). Even if consecutive sentences were not required, we would not find the sentences to be inappropriate.

Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. In performing our review, we assess “the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v.

State, 895 N.E.2d 1219, 1224 (Ind. 2008). This “introduces into appellate review an exercise of judgment that is unlike the usual appellate process, and is very similar to the trial court’s function.” Id. at 1223. A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

As to the nature of the offense, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Childress, 848 N.E.2d at 1081. In 2006, Lodholtz fled as multiple police cars pursued. Despite numerous reminders that his driving privileges had been suspended, he again decided to drive in an urban area in 2007. The 2006 incident demonstrates a lack of concern for the public’s welfare and his own, as well as a disregard for law enforcement.

Meanwhile, he refuses to obey the law. Despite arguing for a reduced sentence, Lodholtz failed to include the pre-sentence investigation report in his Appendix. Accordingly, we take as true the trial court’s description of his criminal record.

[Y]ou’ve spent half your life [twenty of forty years] locked up, and I would imagine if you figure other days in, probably more. On the other hand, you have two pages of juvenile referrals, thirteen juvenile referrals in all, going back to when you were age fourteen. You have a criminal history as an adult that goes back to 1984, and just keeps on going. In that period of time you’ve committed ten misdemeanors as an adult, seven felony offenses as an adult, and that doesn’t include the new one that you pled to today.

Transcript at 40. Furthermore, Lodholtz himself confirmed that “most of my record is for driving, and it all revolves around my substance abuse problem.” Tr. at 38.

The trial court imposed the advisory, four-year term for Lodholtz's conviction of Operating after Lifetime Suspension in Cause 2007, and imposed concurrent sentences in Cause 2006, including one year less than the maximum eight-year term for Operating after Lifetime Suspension. This resulted in an aggregate fifteen-year term of imprisonment, to be fully executed. Having considered the record, we conclude that the defendant's sentences are not inappropriate.

Affirmed.

MATHIAS, J., and BARNES, J., concur.